

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAWRENCE L. FINKELMAN,

Plaintiff,

-v-

NEW YORK STATE POLICE, UNKNOWN
GOVERNMENTAL ENTITIES - JOHN DOE'S -
JANE DOE'S 1-100,

Defendants.
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: 06 Civ. 8705 (JSR)
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: ORDER
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11-15-07

JED S. RAKOFF, U.S.D.J.

On August 20, 2007, the Honorable Kevin Nathaniel Fox, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending that plaintiff's claims against defendant New York State Police be dismissed but that in all other respects the defendant's motion to dismiss the complaint be denied. Subsequently, on September 17, 2007, defendant New York State Police submitted objections to certain portions of the Report and Recommendation. Accordingly, the Court has reviewed the motion and the underlying record de novo.

Having done so, the Court finds itself in complete agreement with Magistrate Judge Fox's Report and Recommendation and hereby adopts its reasoning by reference. Accordingly, the Court dismisses the claims against the New York State Police, with prejudice, but denies the motion to dismiss in all other respects. The Clerk of the Court is directed to close document number 4 in the Court's docket.

There is, however, an issue as to the remaining defendants that was only raised now before this Court and that needs to be addressed by the Magistrate Judge in the first instance, viz., whether

the remaining defendants have been actually served and, if not, whether belated service at this point would be untimely and prejudicial. Accordingly, the Court remands the case to Magistrate Judge Fox to issue a Report and Recommendation on the issue of whether defendants "Unknown Governmental Entities - John Doe's - Jane Doe's 1-100" have been served in this action and whether, if they have not been, the claims against those defendants should be dismissed pursuant to Federal Rule of Civil Procedure 4(m) or otherwise, and with or without prejudice.

SO ORDERED.

A handwritten signature in black ink, appearing to read "JED S. RAKOFF", is written over a horizontal line.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
November 15, 2007